

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 231 of 1987****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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DHIRUBHAI NARSINHDAS & 2 - Appellant(s)**Versus****SHAMBHUBHAI JORABHAI PATEL - Defendant(s)**

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Appearance :

MR SURESH M SHAH for Appellant(s) : 1 - 3.

None for Defendant(s) : 1,

MR KV SHELAT for Defendant(s) : 1.2.1, 1.2.2, 1.2.3,1.2.4

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 03/08/2006****ORAL JUDGMENT**

1. Present appeal has been filed by the appellants
herein - original defendants (hereinafter
referred to as "the defendants") challenging the

judgment and decree passed by the learned City Civil Court, Ahmedabad, dated 20th November, 1986 passed in Civil Suit No.128 of 1980 in decreeing the said suit directing the defendants to hand over peaceful and vacant possession of the suit property to the plaintiff by further directing to pay Rs.1800/- and to pay Rs.50/-per month from the date of the suit till recovery of the possession.

2.The original plaintiff filed the Civil Suit No.128 of 1980 in the City Civil Court, Ahmedabad, for possession of the suit property from the defendants and also for a decree in a sum of Rs.1800/- towards mesne profit at the rate of Rs.50/- per month for a period of 3 years prior to the date of the suit and for further mesne profits at the rate of Rs.50/- per month from the date of the suit till recovery of the possession. During the pendency of the suit, the original plaintiff had expired and therefore, his heirs - respondents herein were brought on record. It was averred in the plaint

that the plaintiff purchased the suit property from one Kamalaben Chimanlal Darji for Rs.6500/- by registered sale-deed executed on 27th October, 1976. It was further averred that he was delivered clear and vacant possession of the first floor of the suit property soon after execution. It was further averred that vendor of the property asked the defendants to hand over the possession of the ground floor of the suit property to the plaintiff but in vain. It was further averred that the defendants have no right, title or interest to remain in possession of the suit property on its sale by its owner Kamalaben Chimanlal Darji in favour of the plaintiff. It was further averred that the defendants were residing in the suit property as relatives of Kamalaben Chimanlal through her husband and they were therefore, liable to vacate the suit property on its sale by said Kamalaben Chimanlal in favour of the plaintiff. It was averred that the plaintiff served one letter of attornment upon the defendants on 28th December, 1976 after his purchasing the suit

property from Kamlaben Chimanlal under the aforesaid registered sale-deed. However, the defendant No.1 and 2 gave evasive replies on 31st January, 1977 and on 23rd/24th March, 1977. It was further averred that the plaintiff also moved the City Survey Office for mutation of his name in the relevant property record with respect to the suit property and by an order dated 18th July, 1977 in the City Survey Inquiry held for the purpose, his name was ordered to be mutated in the property record with respect to the suit property. It was further averred that the defendants resisted the application before the City Survey Officer, however, the defendants were directed to establish their right, title and/or interest in the suit property by means of appropriate proceedings before the competent civil Court. It was further submitted that he thereafter, demanded possession of the suit property from the defendants but they did not comply with the demand and therefore, they were served with one notice dated 24th December, 1979. Since, the defendants did not comply with the

demand contained in the notice, the aforesaid suit came to be filed.

3. The defendants resisted the suit by filing written statement at Exh.10. It was submitted that the suit was hit by the law of limitation and bad on account of laches on the part of the plaintiff. It was further contended that the sale-deed in favour of the plaintiff is null and void and the plaintiff could not acquire any title on the suit property thereunder. In the alternative, it was submitted that the plaintiff has purchased the suit property practically at a throw-away price as against its market price somewhere between Rs.25,000/- to Rs.30,000/-. According to them, Kamlaben Chimanlal Darji was an illiterate and ignorant woman and the plaintiff in collusion with certain other persons might have obtained some writing from her and therefore, those writings or documents would not be binding to the defendants.

4. The learned trial Court raised the issues at

Exh.16. On behalf of the plaintiff, one Madhavlal Joradas Patel examined at Exh.95. The defendants examined defendant No.1 at Exh.114 as their sole witness in the case. Both the sides produced certain documentary evidence i.e. earlier sale-deed at Exh.83 and the subsequent sale-deed in favour of Kamlaben Chimanlal Darji and the sale-deed in favour of the plaintiff dated 27th October, 1976. After considering, oral as well as documentary evidence, the learned trial Court held that the plaintiff has become the absolute owner of the suit property and that he has proved that the defendants are in unauthorized occupation and possession of the suit property. The learned trial Court also further held that the defendants have failed to prove that the sale-deed in respect of the suit property is null and void. The learned trial Court also further held that the suit is not barred by law of limitation and/or laches and ultimately, the learned trial Court passed decree of possession. Being aggrieved and dissatisfied the with judgment and decree passed

by the learned City Civil Court, Ahmedabad, dated 20th November, 1986 passed in Civil Suit No.128 of 1980 in decreeing the said suit against the appellants herein - original defendants, they have preferred the present First Appeal.

5. Shri Mehul S. Shah, learned advocate appearing on behalf of the appellants, has vehemently submitted that the learned trial Court has materially erred in not considering the contentions and submissions raised on behalf of the defendants with regard to the joint ownership of the property in question. It was further submitted that the learned trial Court has further materially erred in not considering the reply to the letter of attornment as part of written statement. It was further submitted that the sale-deed executed by deceased Chimanlal dated 8th March, 1951 was not binding to the defendants and Bai Parsan. It is also further submitted that the learned trial Court has materially erred in not considering the

submissions raised on behalf of the defendants, that the property in question was of joint ownership on the ground that there was no specific plea in the written statement at Exh.10, despite there being evidence about it. It is also further submitted by him that the learned trial Court has materially erred in its finding that the sale-deed Exh.85 in favour of the plaintiff was legal and valid. It is further submitted that the learned trial Court has also further erred in construing Exhs. 83, 84 and 85 and that has resulted into miscarriage of justice. It is also further submitted that the very Kamlaben Chimanlal Darji in her written statement at Exh.118 before the City Survey Officer has clearly stated that the suit property was a joint family property and in that view of the matter, the learned trial Court ought to have held that the sale-deed in favour of the plaintiff was null and void and therefore, it is requested to allow the present appeal.

6. The appeal is opposed by the plaintiffs. Shri K.V.Shelat, learned advocate appearing on behalf of the respondents herein - original plaintiffs, while supporting the judgment and decree passed by the learned trial Court has submitted that the contention on behalf of the defendants that the property in question was a joint family property and of joint ownership was not pleaded by the defendants in the written statement and therefore, the learned trial Court has rightly not allowed the defendants to raise such a plea in the argument. It is also further submitted by him that so far as sale-deed dated 8th March, 1951 is concerned, the contention on behalf of the defendants that the said sale-deed is not binding to them, cannot be accepted as all of them have signed the said sale-deed. It is further submitted that the defendants have never challenged the sale-deed in favour of the plaintiff and therefore, it is not open for them to challenge the same at this stage. It is submitted that the learned trial Court has not committed any error in decreeing the suit

directing the defendants to hand over the peaceful and vacant possession of the suit property.

7. The suit property was originally owned by one Bai Viji and was purchased by Narsinhdas Sankalchand, the fore-father, by registered sale-deed on 10th August, 1929. On the death of said Narsinhdas Sankalchand in the year 1942, his three sons named Chiman Narsinhdas, Dhiraj Narsinhdas and Manilal Narsinhdas and Bai Parsan wd/o Narsinhdas became the owners and were having 1/4th share for each. By registered sale-deed dated 8th March, 1951, Bai Parsan and others sold the property to one Mohanlal Nathabhai (Exh.83). On the death of the said Mohanlal Nathabhai, his sole heir Bhanumatiben D/o Mohanlal Nathabhai became the absolute owner of the said property and thereafter the said property was sold by Bhanumatiben D/o Mohanlal Nathabhai to Kamlaben Chimanlal Darji by registered sale-deed dated 8th October, 1983 (Exh.84). It appears that the said Kamlaben

Chimanlal Darji entered into one agreement to sell but the same was not materialized. Thereafter, the suit property came to be sold in favour of the plaintiff by registered sale-deed dated 27th October, 1976 executed by the Power of Attorney Holder of Kamlaben Chimanlal Darji. Thus, by registered sale-deed dated 27th October, 1976, the plaintiff became the absolute owner of the suit property. It is the contention on behalf of the defendants that the sale-deed dated 8th March, 1951 was not binding to them, cannot be accepted as the very sale-deed dated 8th March, 1951 was signed by Bai Parsan and the defendants and the same was signed by Chiman Narsinhdas, Dhiraj Narsinhdas and Bai Parsan wd/o Narsinhdas for herself and as guardian of minor Manilal Narsinhdas. Once the document dated 8th March, 1951 was signed by the aforesaid persons, it cannot be said that the document dated 8th March, 1951 is not binding to Bai Parsan and the defendants. It is also the contention on behalf of the defendants that the suit property was a joint family property and

the defendants and others are the co-owners. It is required to be noted that in the written statement, there are no such pleadings with regard to joint ownership of the suit property. The learned advocate appearing on behalf of the appellants though conceded that there is no specific plea with regard to the same, however, has submitted that there is reference to the reply to the letter of attornment in which, at Para - 6 it was stated that the suit property is of a joint ownership and therefore, it is submitted by him that the learned trial Court ought to have considered the same as a part of the written statement and ought to have allowed the defendants to contend that it is a joint family property and ought to have decided the same. On going through the written statement, it is required to be noted that there is no averment in the written statement to treat the reply to the letter of attornment as part of written statement hence, it cannot be treated as a part of the written statement. In the written statement, there is only a reference that there

was a reply to the letter of attornment but nothing further has been stated in the written statement that what was the reply to the letter of attornment. Under the circumstances, in absence of any pleadings, the learned trial Court has rightly not considered the submissions on behalf of the defendants that the property is of joint family property and/or of the joint ownership.

8. The learned advocate appearing on behalf of the defendants has heavily relied upon the statement of Kamlaben Chimanlal Darji recorded before the City Survey Superintendent (Exh.118) in which, she has stated that the suit property was joint family property. It is required to be noted that after selling the property to the plaintiff, Kamlaben Chimanlal Darji has changed her version with a view to help the defendants. It is required to be noted that in the sale-deed dated 27th October, 1976 there is no reference that the suit property is a joint family property. In the earlier sale-deeds - documents dated 8th March,

1951 and 8th March, 1973 also, there is no reference to the property being a joint family property. Not only that Kamlaben has entered into an agreement to sell in favour of one Dahyabhai, which was not materialized. However, the fact remains that she has entered into an agreement to sell with regard to the suit property. If the property was of joint family, Kamlaben Chimanlal Darji would not have entered into an agreement to sell. Thus, considering the conduct of the Kamlaben Chimanlal Darji, it is crystal clear that she has tried to change her version after selling the property, which is not permissible.

9. So far as challenge to the sale-deed in favour of the plaintiff dated 27th October, 1976 is concerned, the learned trial Court has rightly held that it is too late to challenge the said sale-deed and as such the challenge to the sale-deed has become time barred. Considering the facts and circumstances and the evidence on record as well as considering the fact that the

plaintiff has become absolute owner of the suit property by registered sale-deed dated 27th October, 1976 and the defendants have no right, title or interest in the suit property, the learned trial Court has rightly passed decree of possession directing the defendants to hand over the peaceful and vacant possession of the suit property to the plaintiff, who has become the absolute owner of the property in question. Hence, no illegality has been committed by the learned trial Court. This Court is in complete agreement with the reasoning and findings of the learned trial Court.

10. For the reasons stated above, the appeal is required to be dismissed and is, accordingly, dismissed. No costs. Ad-interim relief, if any, stands vacated forthwith.

[M.R.SHAH, J.]

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